

Maine Department of Environmental Protection

**DRAFT MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM (MEPDES)
FACT SHEET FOR ISSUANCE OF A GENERAL PERMIT FOR SMALL MUNICIPAL SEPARATE STORM
SEWER SYSTEMS (MS4s)**

AGENCY: MAINE DEPARTMENT OF ENVIRONMENTAL PROTECTION

ACTION: NOTICE OF DRAFT MEPDES MS4 GENERAL PERMITS

SUMMARY: The Maine Department of Environmental Protection (Department) is issuing Notice of Draft MEPDES MS4 general permits for the discharge of stormwater from small MS4s which includes transportation and state and federal facilities, to waters of the State of Maine other than groundwater, and to municipal separate storm sewer systems (MS4). These draft MEPDES MS4 general permits describe permit coverage and limitations, definitions, authorization and notice requirements, stormwater program management plan requirements, and standard conditions for municipalities, transportation MS4s and state federally-owned MS4s.

The public is invited to submit comments on the draft General Permits in writing at the address given below. E-mail and fax (207-287-7191) may also be used to submit comments. To ensure consideration, comments must include the submitter's name and the organization represented, if any. Comments must be received no later than 5:00 p.m. on February 7, 2003. The general permits will be effective on the date specified in the final general permits issued by the Department; the Construction General Permit will expire July 1, 2004. The MS4 General Permits will expire March 9, 2008. The general permit shall be effective on the date specified in the final general permit issued by the Department and will expire March 9, 2008.

PUBLIC MEETING INFORMATION: The Department will hold 2 public meetings to provide information about the Construction and MS4 General Permits and their requirements. The public meetings will include a presentation on the draft permits and a question and answer session. Written, but not verbal, comments for the official permit record will be accepted at the public meeting. The meetings will be at the following locations (see Stormwater Program web site for directions):

Portland: Tuesday, January 21, 2003; at the Barron Center (Bernstein Room), 1145 Brighton Avenue: 10:00 a.m. – 12:00 noon for Construction General Permit; 1:00 p.m. – 4:00 p.m. for MS4 General Permits; Storm date and location: January 22nd: State of Maine Room in Portland City Hall; 389 Congress St. (same times).

Bangor: Friday, January 24, 2003; at the Bangor Civic Center (Lecture Room G), 100 Dutton Street: 10:00 a.m. – 12:00 noon for Construction General Permit; 1:00 – 4:00 p.m. for MS4 General Permits; Storm date: January 28th (same times and location).

PUBLIC HEARING INFORMATION: No public hearing has been scheduled. Persons wishing to request a public hearing may do so in writing during the comment period. The Department will notify anyone commenting if a public hearing is scheduled. Such a hearing would provide interested parties with the opportunity to provide written and/or oral comments for the official record.

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ADDRESS: The draft permit(s) is/are based on an administrative record available for public review at Maine Department of Environmental Protection; 17 State House Station; Hospital Street; Augusta, Maine 04333. The following FACT SHEET AND SUPPLEMENTARY INFORMATION section sets forth principal facts and the significant factual, legal and policy questions considered in the development of the draft permit. A reasonable fee may be charged for copying requests.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the draft permit may be obtained between the hours of 8:30 a.m. and 5:00 p.m. Monday through Friday excluding holidays from: David Ladd; Maine Department of Environmental Protection; 17 State House Station; Augusta, Maine 04333; telephone: 207-287-5404, fax 207-287-7191. E-mail: david.ladd@state.me.us

FACT SHEET AND SUPPLEMENTARY INFORMATION

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Note: This fact sheet references Maine statutes (M.R.S.A citations), Maine rules (CMR citations), Federal Clean Water Act, and Federal rules (CFR citations). See the specific web sites for information on currency of texts.

- The texts of Maine statutes can be found at: <http://janus.state.me.us/legis/statutes/>
- The text of Department rules can be found at: <http://www.state.me.us/sos/cec/rcn/apa/06/chaps06.htm>
- The text of the Clean Water Act can be found at: <http://www.epa.gov/npdes/pubs/cwatxt.txt>
- The text of Title 40, Part 122 of the Federal rules can be found at: http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr122_00.html
- Additional information concerning stormwater in Maine may be found at: <http://www.state.me.us/dep/blwq/stormwtr/index.htm>

A. Introduction

On January 12, 2001, the EPA grant authorized the Department to administer the NPDES program in most areas of the State. As a result, the Department is beginning to incorporate certain requirements that were previously part of the federal program into Maine's stormwater program.

In 1987, Congress amended the Clean Water Act and added Section 402(p). This section requires a comprehensive program for addressing stormwater discharges. Section 402(p)(1) requires the U.S. Environmental Protection Agency (EPA), or delegated states, to issue permits to the following types of storm water discharges:

- Discharge subject to an NPDES permit before February 4, 1987;
- Discharge associated with industrial activity, including construction ;
- Discharge from a municipal separate storm sewer system serving a population of 250,000 or more

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- Discharge from a municipal separate storm sewer system serving a population of 100,000 or more but less than 250,000; and
- A discharge that an NPDES permitting authority determines to be contributing to a violation of a water quality standard or a significant contributor of pollutants the waters of the United States.

Section 402(p)(6) requires that EPA provide a comprehensive program that designates and controls additional sources of stormwater discharges to protect water quality. Sources recently regulated by the second phase of the storm water program include smaller municipal storm water discharges from urbanized areas and discharges from small construction activities. The regulations promulgated under the authority of section 402(p)(6) are commonly referred to as the Phase 2 storm water regulations. The final regulations were published on December 8, 1999.

Types of Discharge- This general permit covers stormwater discharges from small municipal separate storm sewer systems meeting the definition of “small municipal separate storm sewer system” at 40 CFR 122.26(b)(16) and designated under 40 CFR 122.32(a)(1) or 40 CFR 122.32(a)(2). Designation under 40 CFR 122.32(a)(1) applies to small MS4s located in an urbanized area. Designation under 40 CFR 122.32(a)(2) applies to small MS4s determined to need a permit by the Director. A small MS4 is a conveyance or system of conveyances - including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains. This system must be owned or operated by a municipality. A municipality includes the following entities: *the United States, a State, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes including special districts under State law such as a sewer , flood control district or drainage district, or similar entity or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the CWA that discharges to waters of United States...This term includes systems similar to separate storm sewer systems in municipalities, such as systems at military bases, large hospital or prison complexes, and highways and other thoroughfares. The term does not include separate storm sewers in very discrete areas, such as individual building.* For example, an armory located in an urbanized area would not be considered a small regulated MS4

An urbanized area is designated by the Census Bureau. On March 15, 2002, the Census Bureau published final criteria used to define urbanized areas for the 2000 census. An urban area encompasses a densely settled territory which consists of core census block groups or blocks that have a population of at least 1,000 people per square mile and surrounding census blocks that have an overall density of at least 500 people per square mile. Urbanized areas are not divided along political boundaries. Part of a community may be in an urbanized

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area and another community may be fully in the urbanized area. The Phase 2 program applies within the urbanized area. A municipality may decide to implement their program in the entire community, or just in the urbanized area. EPA chose to regulate municipalities within the urbanized areas because urban runoff is a major source of water quality impacts

B. Use of the General Permit Option

Section 301(a) of the Clean Water Act (the Act) provides that the discharge of pollutants is unlawful except in accordance with a National Pollutant Discharge Elimination System (NPDES) permit, unless such a discharge is otherwise authorized by the Act. Title 38 M.R.S.A. Section 413 of Maine's waste discharge law provides that no person may directly or indirectly discharge or cause to be discharged any pollutants without first obtaining a license from the Department. Standards and requirements are specified in statute and rule. Although such permits are generally issued to individual discharges, EPA's and Maine's regulations authorize the issuance of "general permits" to categories of discharges (see 40 CFR Section 122.28 and 06-096 CMR 529(2)). The Department may issue a single, general permit to a category of point sources located within the same geographic area whose discharges warrant similar pollution control measures.

The Director of an NPDES permit program is authorized to issue a general permit if there are a number of point sources operating in a geographic area that:

- Involve the same or substantially similar types of operations;
- Discharge the same types of wastes;
- Require the same effluent limitations or operating conditions;
- Require the same or similar monitoring requirements; and
- In the opinion of the Director, are more appropriately controlled under a general permit than under individual permits.

This general permit meets the requirements of 06-096 CMR 529, "General Permits for Certain Wastewater Discharges" and 06-096 CMR 521(9), "Storm water discharges".

C. Associated rulemaking

The Department is intending to update its rules to incorporate Phase II requirements in 2003, and to make certain related changes. Should this general permit be issued prior to the effective dates of those changes, the Department will issue the general permit pursuant to 06-096 CMR 521(9)(v).

The Department is intending make additional changes in rules, to better integrate the new requirements into existing programs, prior to issuance of a second Construction General permit in July of 2004.

D. The General Permit -- Information concerning certain provisions. The "Parts" referred to below refer to the parts of the general permit.

Part I -- General permit coverage

The general permit(s) authorize the direct and indirect discharge of stormwater to municipal separate storm sewer systems (MS4s) and waters of the state other than groundwater.

Limitations on coverage. This general permit does not authorize a stormwater discharge that requires an individual waste discharge permit or is required to obtain coverage under another waste discharge general permit. The Department may require any person with a discharge authorized by this general permit to apply for and obtain an individual permit.¹ When the DEP notifies an applicant that an individual permit is required, no work may be begun or continued unless and until the individual permit is obtained. Any interested person may petition the Department to take action under this paragraph. Examples of when an individual waste discharge permit may be required are specified in rule.²

- 1. Compliance with this general permit.** This general permit does not authorize a stormwater discharge that is not in compliance with the requirements of this general permit. If the Department determines that the standards of this general permit have not been met, the Department shall notify the person and may:
 - a. Authorize coverage under this general permit after appropriate controls and implementation procedures designed to bring the discharge into compliance with this general permit and water quality standards have been implemented as determined by the Department;
 - b. Require an individual waste discharge permit; or
 - c. Inform the person that the discharge is prohibited.

Compliance with this subparagraph does not preclude any enforcement activity under Maine law for an underlying violation.

- 2. Non-stormwater.** This general permit does not authorize discharges that are mixed with sources of non-stormwater, other than those discharges in compliance with Part IV (D)3(b).
- 3. Discharge of hazardous substances, chemicals, or oil.** This general permit does not authorize the discharge of hazardous substances, chemicals, or oil resulting from an on-site spill.
- 4. Violation of water quality standards.** This general permit does not authorize a discharge that may cause or contribute to a violation of a water quality standard.
- 5. Other waste discharge permit.** This general permit does not authorize a stormwater discharge associated with construction activity that requires an individual MEPDES permit or waste discharge license (WDL) or is required to obtain coverage under another waste discharge general permit.
- 6. Waste discharge license (groundwater).** A WDL may be required for the discharge of stormwater through any well or wells, including drywells and subsurface fluid distribution systems. For complete requirements, see 06-096 CMR 543.

II. Definitions

The general permit makes use of existing state definitions when possible. These include "person", "direct discharge".

¹ See 06-096 CMR 529(2)(B)(3).

² 06-096 CMR 592(2)(B)(3)(i)(A)-(G)

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Federal definitions used in the general permit include "construction activity", "disturbed area" (with additional clarification), stormwater, and NOI.

Disturbed area. The definition of the term "*disturbed area*" is different in the NPDES rules and general permit from the definition used for the same term, for several years, under Maine's Chapter 500 (06-096 CMR 500). The federal definition does not contain the exceptions found in Chapter 500 for areas restored to certain standards within a specified period, and for certain redevelopment. The federal program does make an exception for routine maintenance, and the general permit includes this exception. The general permit defines "routine maintenance" as "maintenance performed to maintain the original line and grade, hydraulic capacity, and original purpose of the facility". This definition is consistent with the approach to routine maintenance taken by the Department under both the Site Law and the Stormwater Management law.

Construction activity. "*Construction activity*" has the same meaning as defined at 06-096 CMR 521(9)(b)(14)(x) and 40 CFR 122.26(b)(15). Construction activities include:

A construction activity including one acre or more of disturbed area, or an activity with less than one acre of total land area that is part of a common plan of development or sale, if the common plan of development or sale will ultimately disturb equal to or greater than one acre; or

Any other construction activity designated by the Department based on the potential for contribution to a violation of a water quality standard or for significant contribution of pollutants to waters of the State.

Based upon Maine's soils, topography, and extensive water resources, the Department has determined that the great majority of construction activities disturbing one acre or more will result in discernable concentrated flows (direct discharges) to waters of the state. While construction activities may occur on a small minority of sites without causing a direct discharge due to favorable topography, soils and/or weather conditions (lack of rainfall), the Department has concluded that an accurate assessment of these factors in advance of a project's initiation is usually not feasible considering cost for the applicant or the Department. Unless a project is of extremely short duration (no more than a few days), the avoidance of a rain event producing runoff is a matter of chance. For this reason, the Department has determined that a construction activity that creates one or more acres of disturbed area will potentially result in a discharge to Maine waters unless the site is internally drained or will otherwise clearly not contribute runoff off-site. Such site conditions are very rare in Maine.

Because ground is not a perfectly level surface, sheet flow eventually channelizes. Sheet flow length, which means the distance sheet flow will travel before channelizing, varies based upon the individual site. However, in general, the USDA's Technical Release - 55 (TR55) "Urban Hydrology for Small Watersheds", which models stormwater flows, accepts a maximum length of sheet flow of 300 feet before shallow concentrated flow begins.

This means that sheet flow is expected to channelize at or before 300 feet on all sites. Natural Resource Conservation Service Staff and Soil and Water Conservation District Staff have advised that, in practice, sheet flow will channelize on most sites at around 150 feet. If the erodability of the soils, degree of slope, concentration of flow, and other variables are considered, rill and gully erosion can occur much sooner than 150 feet. Rill and gully erosion occurs as the velocity of water increases and runoff begins to concentrate in shallow flows. This change in velocity results in additional removal of soil particles from the soil surface.

Notice of Intent "NOI". "Notice of Intent" or "NOI" means a notification of intent to seek coverage under this general permit, made by the applicant to the Department on a form provided by the Department.

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Regulated Small MS4. “Regulated Small MS4” means any Small MS4 authorized by this general permit including all those located partially or entirely within an Urbanized Area and those additional Small MS4s located outside an Urbanized Area which, as of the issuance of this general permit, have been designated by the Department as Regulated Small MS4s. A list of these MS4s is included in Appendix A of the general permit.

Small MS4. “Small MS4” means any MS4 that is not already covered by the Phase I MS4 stormwater program including municipally owned or operated storm sewer systems, State- and Federally-owned systems, such as colleges, universities, prisons, MDOT and MTA road systems and facilities, and military bases and facilities located within an Urbanized Area.

Urbanized area. “Urbanized area” or “UA” means the areas of the State of Maine so defined by the U.S. Census Bureau, for the 2000 census.

III. Procedure

This part of the general permit specifies NOI requirements, including associated submissions. Authorization under the general permit requires prior submittal of certain information. It outlines some available resources that may be used in the development of BMPs and measurable goals. It also stipulates signature requirements which certify that all requirements for authorization under the general permit will continue to be met for all discharges authorized by the general permit. This section informs the registrant where to file a registration form. Upon receipt of all required information, the Commissioner may allow or disallow coverage under the general permit. A stormwater discharge may not begin until the discharge is covered (authorized). The Department considers the submissions specified in the general permit to be the information minimally necessary to allow the Department to determine, as a factual matter, whether a discharge from a specific MS4 in Maine may appropriately be authorized under the general permit.

IV. Requirements

This part of the general permit specifies requirements for authorization in accordance with the following conditions:

- A. Stormwater program management plan** The Permittee must develop, implement, and enforce a Stormwater Program Management Plan (the Plan) designed to reduce the discharge of pollutants from the Small MS4 to the maximum extent practicable to protect water quality, and to satisfy the appropriate water quality requirements of the Clean Water Act. The Plan shall be completed and all Minimum Control Measures fully implemented by March 9, 2008.
- B. Annual fee.** An annual fee of \$150.00 must be submitted each year, starting March 10, 2004 with the submission of the annual report. Fees must be paid by check or money order payable to **Treasurer, State of Maine**. The annual fee will cover permit review and processing.
- C. Development of stormwater program management plan.** The Plan must address the six Minimum Control Measures as indicated in this section. The Plan must, at a minimum, include the measures indicated as required within the Urbanized Area of the municipality. The Permittee may also include in the Plan those measures indicated as suggested and any other measures the Permittee deems appropriate. Some municipalities may choose to implement required measures or portions thereof throughout the entire municipality.

D. Minimum control measures. For each Minimum Control Measure, the Permittee must: define appropriate BMPs; designate a person(s) responsible for each BMP; define a time line for implementation of each BMP; and define measurable goals for each BMP. The Minimum Control Measures to be included in the Plan are as follows.

- **Public education and outreach on stormwater impacts**
- **Public involvement and participation**
- **Illicit discharge detection and elimination**
- **Construction site stormwater runoff control**
- **Post-construction stormwater management in new development and redevelopment**
- **Pollution prevention/good housekeeping for municipal operations**

V. Standard conditions

This part lists a short set of standard conditions, and references other standard conditions applicable under existing rules. The first standard condition listed prohibits discharges to certain classifications and sizes of waterbodies, repeating text currently in rule. The Department is proposing certain statutory and regulatory changes that would affect this section.

Appendix A Regulated Small MS4 Municipalities

Auburn
Bangor
Berwick
Biddeford
Brewer
Cape Elizabeth
Cumberland
Eliot
Falmouth
Freeport
Gorham
Hampden
Kittery
Lewiston
Milford
Old Orchard Beach
Old Town
Orono
Portland
Sabattus
Saco
Scarborough
South Berwick
South Portland
Veazie

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Westbrook

Windham

Yarmouth